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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,705	01/15/2004	Billy Keefer	17646-112001 / 20000244	8442
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BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980				EXAMINER FLYNN, KIMBERLY D
				ART UNIT 2153
				PAPER NUMBER

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/759,705	KEEFER ET AL.
	Examiner	Art Unit
	Kimberly D. Flynn	2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 26 April 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-25 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-25 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 15 January 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 10/01.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed April 26, 2005 have been fully considered but they are not persuasive.

- In response to the arguments that claim 9, which recites; "Software for agent-based monitoring of network devices" produces a useful, concrete, and tangible result, Applicants arguments are not persuasive. Examiner maintains that software is not tangible and also maintains the 35 U.S.C. 101 rejections of claims 9-16.
- Claim 23 was rejected under 35 U.S.C 112, second paragraph, as being indefinite. Applicant has corrected the typographical error; therefore the rejection has been withdrawn.
- In response to Applicant's arguments that Scarpelli fails to teach or suggest selecting an agent template based on an associated device class, Applicant's arguments have been considered but are not persuasive. Examiner maintains the rejection of claims 1, 4-9, 12-17, and 20-25 under U.S.C. 102 as being anticipated by Scarpelli.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 9-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, claims 9-16 are directed to software, which is non-statutory subject matter.

4. To expedite a complete examination of the instant application the claims rejected under 35 USC 101 (nonstatutory) above are further rejected as set forth below in anticipation of applicant amending these claims to place them within the four statutory categories of invention.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

5. Claims 1, 4-9, 12-17, and 20-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Scarpelli et al. (USPN 6,816,898).

6. Regarding claims 1 and 9, Scarpelli et al. (USPN 6,816,898) teach a system for agent-based monitoring of network devices in an enterprise network with means for:

- a. Selecting a network device from the enterprise network (figure 6a, 7; column 8, lines 20-22). Note that the user sets up a monitor agent for a particular device.
- b. Selecting an agent template based on the selected network device (column 7, lines 14-27; figure 6a, 7).
- c. Instantiating an agent object based on the agent template, the agent object operable to monitor hardware characteristics of the network device (column 7, lines 22-27; column 8, lines 55-67).

7. Regarding claims 4, 12, and 20, Scarpelli et al. (USPN 6,816,898) teach all the limitations as applied to claims 1, 9, and 17, respectively. They further teach means wherein

monitoring comprises retrieving information associated with at least a portion of the hardware characteristics of the network device (column 6, lines 3-7).

8. Regarding claims 5, 13, and 21, Scarpelli et al. (USPN 6,816,898) teach all the limitations as applied to claims 1, 9, and 17, respectively. They further teach that each characteristic of the network device is selected from the group consisting of: memory usage; chassis temperature; Central Processing Unit (CPU) usage; fan status; module status; and power supply status (column 6, lines 3-7).

9. Regarding claims 6, 14, and 22, Scarpelli et al. (USPN 6,816,898) teach all the limitations as applied to claims 1, 9, and 17, respectively. They further teach means for comparing at least one of the hardware characteristics to an associated threshold value (column 7, lines 1-2).

10. Regarding claims 7, 15, and 23, Scarpelli et al. (USPN 6,816,898) teach all the limitations as applied to claims 6, 14, and 22, respectively. They further teach means for automatically communicating an alert in response to the hardware characteristic violating the associated threshold value (column 7, lines 1-12).

11. Regarding claims 8, 16, and 24, Scarpelli et al. (USPN 6,816,898) teach all the limitations as applied to claims 1, 9, and 17, respectively. They further teach means wherein the agent object comprises a parent object and at least one child object, the parent object associated with the network device and each child associated with one of the hardware characteristics (column 7, lines 14-27; column 8, lines 20-22). Note that in the reference, a parent script resides at the monitoring machine and the remote “child” agent operates at the network device to monitor its hardware characteristic.

12. Regarding claim 17, Scarpelli et al. (USPN 6,816,898) teach a system for agent-based monitoring of network devices in an enterprise network comprising memory operable to store information associated with a plurality of network devices in the enterprise network (column 5, lines 39-52; column 6, lines 55-59) and one or more processors collectively operable to:

- a. Select a network device from the enterprise network (figure 6a, 7; column 8, lines 20-22). Note that the user sets up a monitor agent for a particular device.
- b. Select an agent template based on the selected network device (column 7, lines 14-27; figure 6a, 7).
- c. Instantiate an agent object based on the agent template, the agent object operable to monitor hardware characteristics of the network device (column 7, lines 22-27; column 8, lines 55-67).

13. Regarding claim 25, Scarpelli et al. (USPN 6,816,898) teach a system for agent based monitoring of network devices in an enterprise network with means for:

- a. Selecting a switch from the enterprise network (figure 6a, 7; column 8, lines 20-22; column 5, lines 15-16). Note that the user sets up a monitor agent for a particular device.
- b. Selecting an agent template based on the selected switch (column 7, lines 14-27; figure 6a, 7).
- c. Instantiating an agent object based on the agent template, the agent object operable to monitor hardware characteristics of the network device based on the agent template (column 7, lines 22-27; column 8, lines 55-67).

- d. Comparing at least one of the hardware characteristics to an associated threshold value (column 7, lines 1-2).
- e. Automatically communicating an alert in response to the at least one of the hardware characteristics violating the associated threshold value (column 7, lines 1-12).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2, 3, 10, 11, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarpelli et al. (USPN 6,816,898) in view of Gundavelli (USPN 6,795,403).

16. Regarding claims 2, 10, and 18, although the system disclosed by Scarpelli et al. (USPN 6,816,898) (as applied to claims 1, 9, and 17, respectively) shows substantial features of the claimed invention, it fails to disclose the network device associated with at least one Management Information Base (MIB) parameter.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Scarpelli et al. (USPN 6,816,898) as evidenced by Gundavelli (USPN 6,795,403).

In an analogous art, Gundavelli (USPN 6,795,403) discloses a system for remote management of devices in a network wherein the network device is associated with at least one Management Information Base (MIB) parameter (abstract; column 6, lines 12-16).

Given the teaching of Gundavelli (USPN 6,795,403), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Scarpelli et al. (USPN 6,816,898) by associating the network device with a MIB parameter. This benefits the system by allowing the user to quickly look up the device by type in the structured database.

17. Regarding claims 3, 11, and 19, although the system disclosed by Scarpelli et al. (USPN 6,816,898) (as applied to claims 2, 10, and 18, respectively) shows substantial features of the claimed invention, it fails to disclose the agent object monitoring the network device based on the one or more MIB parameters.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Scarpelli et al. (USPN 6,816,898) as evidenced by Gundavelli (USPN 6,795,403).

In an analogous art, Gundavelli (USPN 6,795,403) discloses a system for remote management of devices in a network wherein the agent object monitors the network device based on the one or more MIB parameters (abstract; column 6, lines 12-16).

Given the teaching of Gundavelli (USPN 6,795,403), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Scarpelli et al. (USPN 6,816,898) by associating the monitoring of the network device with a MIB parameter. This benefits the system by allowing the user to quickly look up and configure the agent used for monitoring the device.

Conclusion

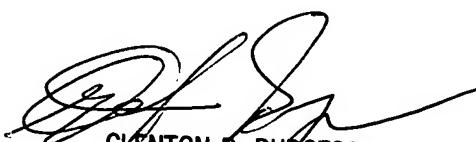
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly D. Flynn whose telephone number is 571-272-3954. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly D Flynn
Examiner
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